

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KYLE KANE KICKING WOMAN,

Defendant.

CR 18-33-GF-BMM-JTJ

**FINDINGS AND
RECOMMENDATIONS**

I. Synopsis

Defendant Kyle Kane Kicking Woman (Kicking Woman) has been accused of violating the conditions of his supervised release. Kicking Woman admitted all of the alleged violations. Kicking Woman's supervised release should be revoked. Kicking Woman should be placed in custody until 1:00 p.m. on November 4, 2019, with 29 months of supervised release to follow. Kicking Woman should serve the first 60 days of supervised release at Connections Corrections in Warm Springs, Montana.

II. Status

Kicking Woman pleaded guilty to Escape on July 10, 2018. (Doc. 20). The Court sentenced Kicking Woman to 14 months of custody, followed by 3 years of

supervised release. (Doc. 32). Kicking Woman's current term of supervised release began on April 15, 2019. (Doc. 36 at 1).

Petition

The United States Probation Office filed a Petition on May 1, 2019, requesting that the Court revoke Kicking Woman's supervised release. (Doc. 36). The Petition alleged that Kicking Woman had violated the conditions of his supervised release: 1) by failing to report to his probation officer as directed; 2) by using methamphetamine; 3) by consuming alcohol; and 4) by failing to follow the instructions of his probation officer.

Initial appearance

Kicking Woman appeared before the undersigned for his initial appearance on October 29, 2019. Kicking Woman was represented by counsel. Kicking Woman stated that he had read the petition and that he understood the allegations. Kicking Woman waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

The Court conducted a revocation hearing on October 29, 2019. Kicking Woman admitted that he had violated the conditions of his supervised release: 1) by failing to report to his probation officer as directed; 2) by using

methamphetamine; 3) by consuming alcohol; and 4) by failing to follow the instructions of his probation officer. The violations are serious and warrant revocation of Kicking Woman's supervised release.

Kicking Woman's violations are Grade C violations. Kicking Woman's criminal history category is IV. Kicking Woman's underlying offense is a Class D felony. Kicking Woman could be incarcerated for up to 24 months. Kicking Woman could be ordered to remain on supervised release for up to 36 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 6 to 12 months.

III. Analysis

Kicking Woman's supervised release should be revoked. Kicking Woman should be incarcerated until 1:00 p.m. on November 4, 2019, with 29 months of supervised release to follow. Kicking Woman should serve the first 60 days of supervised release at Connections Corrections in Warm Springs, Montana. This sentence is sufficient but not greater than necessary.

IV. Conclusion

The Court informed Kicking Woman that the above sentence would be recommended to Judge Morris. The Court also informed Kicking Woman of his right to object to these Findings and Recommendations within 14 days of their

issuance. The Court explained to Kicking Woman that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose. Kicking Woman stated that he wished to waive his right to object to these Findings and Recommendations, and that he wished to waive his right to allocute before Judge Morris.

The Court **FINDS:**

That Kyle Kane Kicking Woman violated the conditions of his supervised release: by failing to report to his probation officer as directed; by using methamphetamine; by consuming alcohol; and by failing to follow the instructions of his probation officer.

The Court **RECOMMENDS:**

That the District Court revoke Kicking Woman's supervised release and commit Kicking Woman to the custody of the United States Bureau of Prisons until 1:00 p.m. on November 4, 2019, with 29 months of supervised release to follow. Kicking Woman should serve the first 60 days of supervised release at Connections Corrections in Warm Springs, Montana.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A United States district court judge will

make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district court judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district court judge, and may waive the right to appear and allocute before a district court judge.

DATED this 29th day of October, 2019.



John Johnston
United States Magistrate Judge